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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

HANSRAJ PARMAR,

Plaintiff and Appellant,

v.

COUNTY OF LOS ANGELES et al.,

Defendants and Respondents.

B189904

(Los Angeles County
Super. Ct. No. BC315767)

APPEAL from a judgment of the Superior Court of Los Angeles County, Alice E. Altoon, Judge. Affirmed.

Albert F. Coombes for Plaintiff and Appellant.

McMillion & Hirtensteiner and E. Thomas Dunn, Jr., for Defendants and Respondents.

INTRODUCTION

Plaintiff Hansraj Parmar appeals from a summary judgment entered in favor of defendants County of Los Angeles (sued erroneously as Los Angeles County USC Medical Center and County of Los Angeles, Department of Health Services), David Zamorano and Diane Fuqua. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

On October 8, 2003, plaintiff was discharged from his position with defendant County of Los Angeles (County) as an orthopedic technician at County USC Medical Center. The basis of his discharge was violation of the County's policies against sexual harassment and creation of an intimidating work environment. Defendant Diane Fuqua (Fuqua), the supervising orthopedic technician, had received complaints about plaintiff's behavior. Defendant David Zamorano (Zamorano), the manager of the human resources office, previously had placed plaintiff on administrative reassignment to his home, pending the outcome of an investigation of the complaints. Following receipt of the discharge letter, plaintiff appealed his discharge to the County Civil Service Commission (Commission).

On May 19, 2004, plaintiff filed a complaint against defendants alleging discrimination based upon national origin, wrongful termination in violation of public policy, breach of contract, breach of the implied covenant of good faith and fair dealing, and intentional infliction of emotional distress. On July 7, 2004, defendants filed an answer to plaintiff's complaint, denying plaintiff's claims. On August 13, 2004, the parties filed a stipulation with the trial court proposing to stay proceedings pending resolution of plaintiff's appeal with the Commission. The stipulation was approved by the court and filed on August 26, 2004.

On December 28, 2004, plaintiff filed a copy of the Final Commission Action in his case before the Commission. The Commission found plaintiff's conduct was culpable

and “sufficiently egregious” to warrant discipline, but not discharge. The Commission reduced the discharge to a 30-day suspension and reinstated plaintiff to his former position, but did so with no back pay.

The evidence presented to the Commission showed that complaints had been made by coworkers about plaintiff attempting to become involved in the social life of a female co-worker, Maria Hill (Hill). Plaintiff allegedly asked Hill on dates and to movies and to accompany him to his timeshare in Palm Springs, saying that on the drive, she could “rest her head on [his] lap.”

Another complaint concerned a dispute with a coworker, Christopher Slajer (Slajer), on June 12, 2002. Plaintiff allegedly grabbed his crotch, made an obscene gesture and a rude comment directed at Slajer in front of a female patient. Plaintiff testified that he had been called a “faggot” by Slajer, and Slajer had instigated the dispute. Plaintiff added that Slajer had also referred to plaintiff as Osama bin Laden and made an obscene gesture at him.¹

When asked why others had seen plaintiff grabbing his crotch, plaintiff admitted he was moving his hands in that area but claimed he was merely using a wet towel to wipe plaster from his pants. None of the witnesses saw a towel. The hearing officer concluded that plaintiff’s testimony showed a “general lack of credibility.” The hearing officer also distrusted the testimony of Slajer and only credited it to the extent it was corroborated by other witnesses.

The hearing officer determined that the allegations involving Hill were not sexual harassment. Plaintiff had been confronted about the allegations by Fuqua, and, after being warned, the behavior and invitations to Hill stopped. The hearing officer also concluded that plaintiff and Slajer were coworkers that did not get along, but the alleged incident of June 12, 2002 did not reflect sexual harassment.

¹ Plaintiff is an Indian immigrant from Bombay.

The hearing officer made ten formal findings of fact and reached five substantive conclusions. He ultimately recommended that plaintiff be suspended for 30 days, but then reinstated to his position, without back pay.

After the decision of the Commission, defendants began trying to contact plaintiff to make arrangements for him to return to work. The effort started on January 20, 2005 with a message left on plaintiff's answering machine telling him to report to work on Monday, January 24. Zamorano followed this up with certified letters to plaintiff on January 21 and 27. The letters received no response, and telephone calls went unanswered.

At some point, plaintiff requested that he be transferred to another County facility. On March 18, 2005, defendants' counsel spoke to plaintiff about his request, informing him that there was no other facility to which he could be transferred. Finally, on May 16, 2005, defendants' counsel sent a letter to plaintiff to "confirm the numerous voice messages I left at your home regarding returning to your position of an orthopedic technician at LAC+USC Medical Center. Unfortunately, there are no other positions open for an orthopedic technician within the Department of Health Services for the County of Los Angeles at this time. However, the Department is holding your position open for your return to General Hospital." Counsel asked plaintiff to contact her to discuss whether he planned to return to work. There was no response from plaintiff.

On June 15, 2005, defendants filed a motion for summary judgment or, in the alternative, summary adjudication. Defendants argued that plaintiff had effectively abandoned his wrongful discharge claim by failing to return to work, and the wrongful termination claim was moot because the discharge order had been reduced to a suspension order and plaintiff was free to return to work. Defendants also argued that plaintiff's complaint was barred by collateral estoppel and res judicata because the issues raised by his complaint had already been decided by the Commission, and its action barred the relitigation of those issues in the civil case. The trial court granted defendants' motion for summary judgment.

DISCUSSION

Summary judgment properly is granted if there is no question of fact and the issues raised by the pleadings may be decided as a matter of law. (Code Civ. Proc., § 437c, subd. (c); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843.) To secure summary judgment, a moving defendant may show that one or more elements of the cause of action cannot be established or that there is a complete defense to the cause of action. (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar, supra*, at p. 849.) Once the moving defendant has met its burden, the burden shifts to the plaintiff to show that a triable issue of fact exists as to the cause of action or the defense thereto. (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar, supra*, at p. 849.) All doubts as to the propriety of granting the motion are resolved in favor of the opposing party. (*Hamburg v. Wal-Mart Stores, Inc.* (2004) 116 Cal.App.4th 497, 502.)

On appeal, we exercise our independent judgment in determining whether there are no triable issues of material fact and the moving party thus is entitled to judgment as a matter of law. (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 334-335.) We must uphold the judgment if it is correct on any ground, regardless of the reasons the trial court gave. (*Biljac Associates v. First Interstate Bank* (1990) 218 Cal.App.3d 1410, 1419.)

Plaintiff's position below was that following the Commission hearing, Slajer was not disciplined, and defendants planned to put him back in the same job as he had before he was disciplined, working with Slajer. This, he claimed, amounted to "constructive discharge."

On appeal, plaintiff contends that he was wrongfully terminated on October 8, 2003, when defendants initially discharged him, and "[t]hat issue is res judicata in this action pursuant to the Civil Service Commission ruling." That he "did not return to work following the administrative judge's ruling has no bearing on his original civil complaint other than as evidence of his possible failure to mitigate his damages."

Under the doctrine of res judicata, plaintiff is precluded from relitigating issues which were raised or could have been raised in a prior action. (*Torrey Pines Bank v.*

Superior Court (1989) 216 Cal.App.3d 813, 821.) Similarly, collateral estoppel bars relitigation of all factual issues actually litigated and necessarily decided in prior litigation. (*Alhino v. Starr* (1980) 112 Cal.App.3d 158, 170.) It may be applied if the issues decided in the prior adjudication are identical to those raised in the present action, there was a final judgment on the merits in the prior adjudication, and the party against whom the doctrine is sought to be applied was a party to the prior adjudication or in privity with a party. (*Clemente v. State of California* (1985) 40 Cal.3d 202, 222.)

In *Knickerbocker v. City of Stockton* (1988) 199 Cal.App.3d 235, plaintiff was fired from his position with defendant as a police officer. He challenged his firing at a Civil Service Commission hearing and was reinstated at a lower rank. He did not challenge the Commission's ruling by petition for writ of administrative mandate but instead filed a claim for damages and then a lawsuit. The lawsuit was dismissed following the sustaining of a demurrer without leave to amend.² (*Id.* at p. 239.)

On appeal, the court noted that “[t]he doctrine of collateral estoppel bars the relitigating of issues which were previously resolved in an administrative hearing by an agency acting in a judicial capacity.” (*Knickerbocker v. City of Stockton, supra*, 199 Cal.App.3d at p. 242; accord, *People v. Sims* (1982) 32 Cal.3d 468, 478-479.) Thus, “[u]nless the administrative decision is challenged, it binds the parties on the issues litigated and if those issues are fatal to a civil suit, the plaintiff cannot state a viable cause of action.” (*Knickerbocker, supra*, at p. 243.) Because plaintiff “never overturned the finding of the Commission that there was justification for demotion as a consequence of his actions,” he was collaterally estopped from relitigating that issue in his subsequent lawsuit. (*Id.* at p. 244.)

² While the demurrer was sustained based on failure to exhaust administrative remedies, the appellate court concluded that the real issue was failure to exhaust judicial remedies, which “is a species of res judicata.” (*Knickerbocker v. City of Stockton, supra*, 199 Cal.App.3d at p. 241.)

The court found, however, that not all issues raised in plaintiff's lawsuit were litigated before the Commission. Plaintiff sought damages for emotional distress arising from his improper firing. Since this cause of action was not barred by collateral estoppel, the trial court erred in sustaining the demurrer without leave to amend and dismissing the action. (*Knickerbocker v. City of Stockton, supra*, 199 Cal.App.3d at pp. 245-246.)

Here, the Final Commission Action letter of November 17, 2004 informed the parties of the right to seek review of their decision by the Superior Court under section 1085 or 1094.6 of the Code of Civil Procedure. Plaintiff never challenged the administrative findings and conclusions of the Commission by a writ of mandate. They thus have become final and binding on plaintiff. (*Knickerbocker v. City of Stockton, supra*, 199 Cal.App.3d at pp. 243-244.) Collateral estoppel bars relitigation of the issues resolved by the Commission. (*Id.* at p. 242; see also *Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61, 76.)

Contrary to plaintiff's contention on appeal, the Commission did not find that plaintiff was wrongfully terminated on October 8, 2003. The Commission, in adopting the findings of the hearing officer, found that, "[w]hile not warranting discharge, [plaintiff's] misconduct [was] sufficiently egregious that he should receive a 30-day suspension and be reinstated without any back pay." In other words, the Commission impliedly found that defendants' actions were based on plaintiff's misconduct, not his national origin or in violation of public policy. As to his October 8, 2003 discharge, the Commission simply found that the discipline imposed for plaintiff's misconduct was too severe. Collateral estoppel bars relitigation of the question whether plaintiff was disciplined based on his actions or his national origin. (See *Risam v. County of Los Angeles* (2002) 99 Cal.App.4th 412, 423; *Knickerbocker v. City of Stockton, supra*, 199 Cal.App.3d at pp. 243-244.)

Plaintiff's claim below of constructive discharge properly was rejected. On a summary judgment motion, "[t]he determination whether facts have been adduced . . . which present triable issues of fact is to be made in the light of the pleadings." (*Leasman v. Beech Aircraft Corp.* (1975) 48 Cal.App.3d 376, 380.) The court examines the

pleadings in order to define the issues of which summary judgment disposes. (*Hooks v. Southern Cal. Permanente Medical Group* (1980) 107 Cal.App.3d 435, 442.) Inasmuch as plaintiff never pleaded constructive discharge based upon defendants' failure to transfer him to another facility, the issue was not before the trial court.

Plaintiff also never pleaded damages resulting from anything other than termination based on national origin. More specifically, he never pleaded damages resulting from defendants' decision to terminate rather than suspend him. This distinguishes the instant case from *Knickerbocker*, where such damages were pleaded. (*Knickerbocker v. City of Stockton, supra*, 199 Cal.App.3d at p. 245.)

Moreover, to the extent plaintiff claims damages other than discharge resulting from disparate treatment based on national origin, he cites no evidence supporting his claims. The evidence he presented in opposition to defendants' summary judgment motion does not establish discrimination based on national origin. Plaintiff therefore failed to meet his burden of showing the existence of a triable issue of fact precluding summary judgment. (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar v. Atlantic Richfield Co., supra*, 25 Cal.4th at p. 849.)³

³ Plaintiff fails to discuss his causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing and intentional infliction of emotional distress. This waives any contentions he could have raised as to these causes of action. (*Title G. & T. Co. v. Fraternal Finance Co.* (1934) 220 Cal. 362, 363; 9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 594, pp. 627-629.)

DISPOSITION

The judgment is affirmed.

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JACKSON, J.^{*}

We concur:

MALLANO, Acting P. J.

VOGEL, J.

^{*} Judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.